

Article 4.

Neighborhood Roads, Cartways, Church Roads, etc.

§ 136-67. Neighborhood public roads.

All those portions of the public road system of the State which have not been taken over and placed under maintenance or which have been abandoned by the Department of Transportation, but which remain open and in general use as a necessary means of ingress to and egress from the dwelling house of one or more families, and all those roads that have been laid out, constructed, or reconstructed with unemployment relief funds under the supervision of the Department of Health and Human Services, and all other roads or streets or portions of roads or streets whatsoever outside of the boundaries of any incorporated city or town in the State which serve a public use and as a means of ingress or egress for one or more families, regardless of whether the same have ever been a portion of any State or county road system, are hereby declared to be neighborhood public roads and they shall be subject to all of the provisions of G.S. 136-68, 136-69 and 136-70 with respect to the alteration, extension, or discontinuance thereof, and any interested party is authorized to institute such proceeding, and in lieu of personal service with respect to this class of roads, notice by publication once a week in any newspaper published in said county, or in the event there is no such newspaper, by posting at the courthouse door and three other public places, shall be deemed sufficient: Provided, that this definition of neighborhood public roads shall not be construed to embrace any street, road or driveway that serves an essentially private use, and all those portions and segments of old roads, formerly a part of the public road system, which have not been taken over and placed under maintenance and which have been abandoned by the Department of Transportation and which do not serve as a necessary means of ingress to and egress from an occupied dwelling house are hereby specifically excluded from the definition of neighborhood public roads, and the owner of the land, burdened with such portions and segments of such old roads, is hereby invested with the easement or right-of-way for such old roads heretofore existing.

Upon request of the board of county commissioners of any county, the Department of Transportation is permitted, but is not required, to place such neighborhood public roads as above defined in a passable condition without incorporating the same into the State or county system, and without becoming obligated in any manner for the permanent maintenance thereof.

This section shall not authorize the reopening on abandoned roads of any railroad grade crossing that has been closed by order of the Department of Transportation in connection with the building of an overhead bridge or underpass to take the place of such grade crossing. (1929, c. 257, s. 1; 1933, c. 302; 1941, c. 183; 1949, c. 1215; 1957, c. 65, s. 11; 1969, c. 982; 1973, c. 476, s. 138; c. 507, s. 5; 1977, c. 464, s. 7.1; 1997-443, s. 11A.122.)

§ 136-68. Special proceeding for establishment, alteration or discontinuance of cartways, etc.; petition; appeal.

The establishment, alteration, or discontinuance of any cartway, church road, mill road, or like easement, for the benefit of any person, firm, association, or corporation, over the lands of another, shall be determined by a special proceeding instituted before the clerk of the superior court in the county where the property affected is situated. Such special proceeding shall be commenced by a petition filed with said clerk and the service of a copy thereof on the person or persons whose property will be affected thereby. From any final order or judgment in said special proceeding, any interested party may appeal to the superior court for a jury trial de novo on all issues including the

right to relief, the location of a cartway, tramway or railway, and the assessment of damages. The procedure established under Chapter 40A, entitled "Eminent Domain," shall be followed in the conduct of such special proceeding insofar as the same is applicable and in harmony with the provisions of this section. (1879, c. 82, s. 9; Code, s. 2023; Rev., s. 2683; C.S., s. 3835; 1931, c. 448; 1995, c. 513, s. 1.)

§ 136-69. Cartways, tramways, etc., laid out; procedure.

(a) If any person, firm, association, or corporation shall be engaged in the cultivation of any land or the cutting and removing of any standing timber, or the working of any quarries, mines, or minerals, or the operating of any industrial or manufacturing plants, or public or private cemetery, or taking action preparatory to the operation of any such enterprises, to which there is leading no public road or other adequate means of transportation, other than a navigable waterway, affording necessary and proper means of ingress thereto and egress therefrom, such person, firm, association, or corporation may institute a special proceeding as set out in the preceding section (G.S. 136-68), and if it shall be made to appear to the court necessary, reasonable and just that such person shall have a private way to a public road or watercourse or railroad over the lands of other persons, the court shall appoint a jury of view of three disinterested freeholders to view the premises and lay off a cartway, tramway, or railway of not less than 18 feet in width, or cableways, chutes, and flumes, and assess the damages the owner or owners of the land crossed may sustain thereby, and make report of their findings in writing to the clerk of the superior court. Exceptions to said report may be filed by any interested party and such exceptions shall be heard and determined by the clerk of the superior court. The clerk of the superior court may affirm or modify said report, or set the same aside and order a new jury of view. All damages assessed by a judgment of the clerk, together with the cost of the proceeding, shall be paid into the clerk's office before the petitioners shall acquire any rights under said proceeding.

(b) **(See editor's note)** Compensation to the landowner for the establishment of a cartway over the property of another shall be as provided in Chapter 40A Article 4 of the North Carolina General Statutes.

(c) Where a tract of land lies partly in one county and partly in an adjoining county, or where a tract of land lies wholly within one county and the public road nearest or from which the most practical roadway to said land would run, lies in an adjoining county and the practical way for a cartway to said land would lead over lands in an adjoining county, then and in that event the proceeding for the laying out and establishing of a cartway may be commenced in either the county in which the land is located or the adjoining county through which said cartway would extend to the public road, and upon the filing of such petition in either county the clerk of the court shall have jurisdiction to proceed for the appointment of a jury from the county in which the petition is filed and proceed for the laying out and establishing of a cartway as if the tract of land to be reached by the cartway and the entire length of the cartway are all located within the bounds of said county in which the petition may be filed. (1798, c. 508, s. 1, P.R.; 1822, c. 1139, s. 1, P.R.; R.C., c. 101, s. 37; 1879, c. 258; Code, s. 2056; 1887, c. 46; 1903, c. 102; Rev., s. 2686; 1909, c. 364, s. 1; 1917, c. 187, s. 1; c. 282, s. 1; C.S., s. 3836; 1921, c. 135; Ex. Sess., 1921, c. 73; 1929, c. 197, s. 1; 1931, c. 448; 1951, c. 1125, s. 1; 1961, c. 71; 1965, c. 414, s. 1; 1981, c. 826, s. 1; 1995, c. 513, ss. 2, 3a)

§ 136-70. Alteration or abandonment of cartways, etc., in same manner.

Cartways or other ways established under this Article or heretofore established, may be altered, changed, or abandoned in like manner as herein provided for their establishment upon petition instituted by any interested party: Provided, that all cartways, tramways, or railways established for the removal of timber shall automatically terminate at the end of a period of five years, unless a greater time is set forth in the petition and the judgment establishing the same. (1798, c. 508, ss. 1, 2, 3, P.R.; 1834, c. 16, s. 1; R.C., c. 101, s. 38; Code, s. 2057; 1887, c. 46, s. 2; c. 266; Rev., s. 2694; C.S., s. 3837; 1931, c. 448; 1995, c. 513, s. 3.)

§ 136-71. Church roads and easements of public utility lines laid out on petition; procedure.

Necessary roads or easements and right-of-ways for electric light lines, power lines, water lines, sewage lines, and telephone lines leading to any church or other place of public worship may be established in the same manner as set forth in the preceding sections of this Article upon petition of the duly constituted officials of such church. (1872-3, c. 189, ss. 1-3, 5; Code, ss. 2062, 2064; Rev., ss. 2687, 2689; C.S., s. 3838; 1931, c. 448; 1949, c. 382.)

§§ 136-71.1 through 136-71.5. Reserved for future codification purposes.